

STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCOVERY

Criminal Rule 15: The defendant is not entitled to the victim's medical records "since birth" because such records have no relevance to the injuries caused by the defendant.

The State of Arizona, by and through undersigned counsel, in response to defendant's Motion for Production of Medical Records, requests this Court to deny the motion based upon the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

On March 4, 1995, at approximately 6:19 p.m., Hector Fernandez was involved in a high-speed collision at 2000 W. Peoria when his vehicle struck a vehicle being driven by Sara Hoffett. Ms. Hoffett states that she had stopped prior to entering traffic on Peoria from a private drive. Witnesses observed the defendant's vehicle traveling through traffic at an extremely high rate of speed and saw it strike Ms. Hoffett's vehicle.

When officers arrived at the scene, they detected a strong odor of alcohol on the defendant's breath and he admitted to drinking beer. A HGN test was conducted and six cues of intoxication were present. At first, the defendant refused medical treatment, but later he agreed to be transported to John C. Lincoln Hospital. At that time, Officer Garza responded to the hospital and placed the defendant under arrest for aggravated assault. While at the hospital, the defendant again declined treatment. The police department's nurse, Homer Shaulis, was then called to draw blood from the defendant at 8:24 p.m. The results of that blood test show that the defendant had a BAC of .11.

As a result of the collision, Sara Hoffett suffered a fractured lower lumbar transfer process and a torn tendon in her left shoulder. She is suffering from severe headaches and is currently receiving physical therapy on her neck, shoulders, back, and hips.

Carrie Johnson, a passenger in Ms. Hoffett's vehicle, suffered a crushed orbital floor in her right eye; doctors had to insert a steel plate to reconstruct the eye socket. She is currently receiving therapy for sore ribs, neck pain, and shoulder pain, and she is also suffering from severe headaches. The defendant is charged with two counts of aggravated assault with a vehicle, each a class three dangerous felony.

LAW

The defendant is requesting the State provide him with all of the victims' medical records since birth. He cites *State ex rel. Romley v. Superior Court [Roper, Real Party in Interest]*, 172 Ariz. 232, 836 P.2d 445 (App. 1992), for the proposition that victims may not thwart the defendant's ability to effectively present a legitimate defense. However, under Rule 15.1(e), Ariz. R. Crim. Proc., a defendant must show "substantial need in the preparation of his or her case" for those records. Nothing suggests that the defendant has a substantial need for the victim's medical records from birth, and he has made no showing of need for those records. The State has complied with its discovery obligations. Because the defendant has not shown any "substantial need" for the victim's medical records, he is not entitled to those records.

In *Knapp v. Martone*, 170 Ariz. 237, 239, 823 P.2d 685, 687 (1992), the Arizona Supreme Court discouraged the trial courts from carving out exceptions to the Victims' Bill of Rights and encouraged trial courts to follow the plain language of the Victims' Bill of Rights:

It is important to emphasize that Arizona courts must follow and apply the plain language of this new amendment to our constitution. If trial courts are permitted to make ad hoc exceptions to the constitutional rule based upon the perceived exigencies of each case, the harm the Victims' Bill of Rights was designed to ameliorate will, instead, be

increased. Permitting such ad hoc exceptions will encourage defendants or others to assert that the person designated as the victim should, instead, be considered a suspect.

In *Roper, supra*, the court held that when the defendant's constitutional right to due process directly conflicts with the Victims' Bill of Rights, as under the facts in *Roper*, due process is the superior right.

The unique factual background of *Roper, supra*, is distinguishable from the instant matter and can be summarized as follows: The defendant called 911 and reported that her husband, the victim, was beating her and threatening her with a knife. When police arrived, they found the husband bleeding from a stomach wound. The defendant was charged with aggravated assault. The defendant filed a motion to require the victim to make available for copying all his past and present medical records from any institution in any jurisdiction. The motion alleged that the victim had been receiving treatment for years for "multiple personalities." The motion alleged that the defendant was acting in self-defense in stabbing the husband because one of her husband's violent personalities attacked her. The victim had been arrested three times and convicted once for assaulting the defendant.

The trial court in *Roper* granted the motion for production of all of the victim's records, ordering that the records be produced for in-camera inspection solely on the issue of multiple personalities. The State filed a special action. The Court of Appeals granted partial relief, ordering the trial court to review the medical records *in camera* to determine if any part of those records was essential to the presentation of a self-defense claim or to the determination of the victim's ability to perceive, recall, and accurately relate the events of the stabbing incident. The Court ordered the trial court to

release only those portions of the medical records it deemed essential to the defense's claims. *State ex rel. Romley v. Superior Court*, 172 Ariz. 232, 235, 836 P.2d 445, 448 (App. 1992).

Roper is distinguishable from the instant case because the defendant here has not presented any evidence that his due process rights conflict with the Victims' Bill of Rights, nor can he present any such evidence. In *Roper*, the Court of Appeals held that the defendant had presented sufficient evidence to raise self-defense and to put the burden of proof on the State to overcome the defense. In this case, first of all, the defendant has not even suggested why the victims' medical records "since birth" would be relevant to the injuries they received when his vehicle collided with theirs. As for the injuries caused in the crash, it is clear that the defendant has not made any factual showing establishing any defense that would require disclosure of the requested medical records, since the victims can testify about their injuries. In addition, the State does not have the requested records, and is not aware that either of the victims has waived her right to the privacy of her records.

CONCLUSION

The defendant has not shown any substantial need for the victims' medical records. The State, therefore, respectfully requests that the Court deny the defendant's Motion to Compel Discovery for the Victims' medical records from birth.